

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8620 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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DISTRICT HEALTH OFFICER - Petitioner(s)
Versus
GITABEN CHHOTBHAI VASI - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner No(s).: 1.

MR MAGANLAL PARMAR for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 05/07/2005

ORAL JUDGMENT

1. Today, when the matter was called on for hearing, Mr. Parmar is not present. Even on earlier occasions, he had remained absent. Hence, the matter is taken up for final hearing today.

2. This petition is directed against the judgment and award dated 20th June, 1992 passed by the Labour Court, Surat in Reference [L.C.S.] No. 123 of 1994, whereby the Labour Court has directed the petitioner Panchayat to reinstate the respondent in service with full back wages along with all the consequential benefits.

3. The short facts of the case are that the respondent was serving as an Auxillary Nurse Midwife with the petitioner Panchayat. The respondent was transferred to Wadpada Primary Health Centre, Vadodara, whereby she failed to resume her duty and, therefore, the respondent was relieved from the service. Thereafter due to settlement arrived at between the parties in Reference No. C.294/89, the respondent was reinstated in service. It is the case of the petitioner Panchayat that the respondent workman is in the habit of remaining absent from the duty.

3.1. It is the case of the petitioner Panchayat that in spite of repeated reminders to resume duty at the transferred place, the respondent did not resume her duties and, therefore, departmental inquiry was initiated against her. After completion of the departmental inquiry, a show cause notice dated 12th July, 1991 was issued. It is the case of the petitioner Panchayat that the respondent resumed the duty for a limited period and thereafter remained absent without any prior permission. Hence, the respondent was dismissed from the service w.e.f. 17th February, 1992, on the ground of absenteeism.

3.2. Being aggrieved by the dismissal order, the

respondent raised an industrial dispute which was ultimately referred to the Labour Court for adjudication. The Labour Court after appreciating the materials produced before it, allowed the said Reference with the aforesaid directions. Hence, this petition.

4. I have heard the learned counsel for the respective parties. Having perused the materials placed on record, it transpires that the Labour Court has not committed any error in ordering to reinstate the respondent in service. The Labour Court found that the respondent had completed 240 days work. Thus, I am in complete agreement with the reasonings adopted and findings arrived at by the Labour Court for awarding reinstatement in service to the respondent.

4.1. However, the Labour Court has committed error in granting full back wages *inasmuch* as though the petitioner Panchayat has offered part time job, she had denied the same. Moreover, in view of the principle laid down by the Apex Court that "No Work No Pay", grant of back wages was not justified. Thus, the impugned order of the Labour Court qua the direction of back wages is required to be quashed and set aside.

5. For the foregoing reasons, the petition is partly allowed. The award dated 20th June, 1992 passed by the Labour Court, Surat in Reference [L.C.S.] No. 123 of 1994, qua the direction with regard to grant of back wages is quashed and set aside and rest of the award is confirmed. However, it is made clear that the petitioner Panchayat

shall pay difference of salary from the publication of the award and the actual salary as well as the benefits under Section 17B of the Industrial Disputes Act, 1947, within a period of three months from the date of receipt of writ of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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